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DEMOCRATIZING FEDERAL FOREST MANAGEMENT THROUGH PUBLIC PARTICIPATION AND COLLABORATION

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INTRODUCTION

Public participation and collaboration in federal forest management has evolved over the last century. Currently, the federal land management agencies are encouraged through statutes and regulations[1] to actively and meaningfully collaborate with the public during project development and implementation. The hope is that through greater public engagement, the management gridlock that has impeded forest restoration and thinning since the 1990s will be reduced. It is also assumed that as a result of collaboration, environmental review under the National Environmental Policy Act (NEPA) will be improved leading to better natural resource management decisions.[2] The Four Forest Restoration Initiative (4FRI), a collaborative effort to restore 2.4 million acres of ponderosa pine forest across four national forests in northern Arizona,[3] is an example of how collaboration can lower conflict and create agreements that help avoid delays caused by litigation.[4]

I. EARLY HISTORY OF THE FOREST SERVICE

Westward expansion and settlement—in the mid to late 1800s—fueled by the belief that wilderness should be tamed—often resulted in the unbridled

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1. Healthy Forest Restoration Act, 16 U.S.C. § 6501 (2012); The Collaborative Forest Landscape Restoration Act, 16 U.S.C. § 7303 (2012); 36 C.F.R. pt. 219 (2012); Exec. Order No. 13,352, 69 Fed. Reg. 52,989 (2004).

2. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-262, NATURAL RESOURCE MANAGEMENT: OPPORTUNITIES EXIST TO ENHANCE FEDERAL PARTICIPATION IN COLLABORATIVE EFFORTS TO REDUCE CONFLICTS AND IMPROVE NATURAL RESOURCE CONDITIONS 15 (2008).

3. *Four Forest Restoration Initiative*, U.S. FOREST SERV., http://www.fs.usda.gov/4fri (last visited Mar. 14, 2016).

4. One objector has filed a complaint. However, he has not sought injunctive relief, so implementation is proceeding.

exploitation of natural resources.[5] In response, and in association with the progressive era of the late 1800s, national forest reserves were set aside to protect forest and water resources and regulate activity.[6] These reserves were early steps toward formally establishing the U.S. Forest Service in 1905. The purpose established for national forests was to preserve water supplies, preserve the forests, and provide a supply of timber.[7] These core goals remain relevant today. In addition, the Forest Service uniquely positioned itself to be a revenue generator for the federal government by establishing that timber would be managed and auctioned with the proceeds going to the government.[8]

A significant factor in the evolution of the Forest Service was the selection of Gifford Pinchot, a European trained forester, as the first Chief of the Forest Service. He focused early efforts on watershed management, forest regulation and wildfire prevention and suppression. Pinchot restructured and professionalized the management of the national forests, as well as greatly increased the number of national forests.[9] The progressive era embraced the idea that science should inform decision-making and Pinchot believed that professionals were needed to ensure quality management. When judged in the context of the time this makes sense and can be viewed as intellectual progress and enlightenment. However, by the 1960s the attitude that the Forest Service is the sole judge of national forest management was vehemently challenged by the environmental and conservation movement.

II. WORLD WAR II: A PROSPEROUS NATION BUILDS HOMES

During and after World War II there was a massive demand for wood to support the war effort and supply material for a post-war housing boom.

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5. *Conservation in the Progressive Era: Overview*, LIBRARY CONG., http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/progress/conserve/ (last visited Mar. 4, 2016).

6. *Forest Reserve Act*, GILDER LEHRMAN INST. AM. HIST., http://www.gilderlehrman.org/history-by-era/development-west/timeline-terms/forest-reserve-act (last visited Mar. 4, 2016).

7. Established by the U.S. Land Revision Act of 1891 with management guidance provided by the 1897 Forest Management Act.

8. David Wilma, *Congress Establishes the First Federal Forest Reserves on March 3, 1891*, HIST. LINK (Feb. 28, 2003), http://www.historylink.org/index.cfm?DisplayPage=output.cfm&File_Id=5322.

9. *U.S. Forest Service History: Gifford Pinchot (1865-1946)*, FOREST HIST. SOC'Y, http://www.foresthistory.org/ASPNET/People/Pinchot/Pinchot.aspx (last updated May 1, 2015).

Figure 1 illustrates the upward trend in wood sold and harvested starting with the war and ending in the late 1980s.[10]

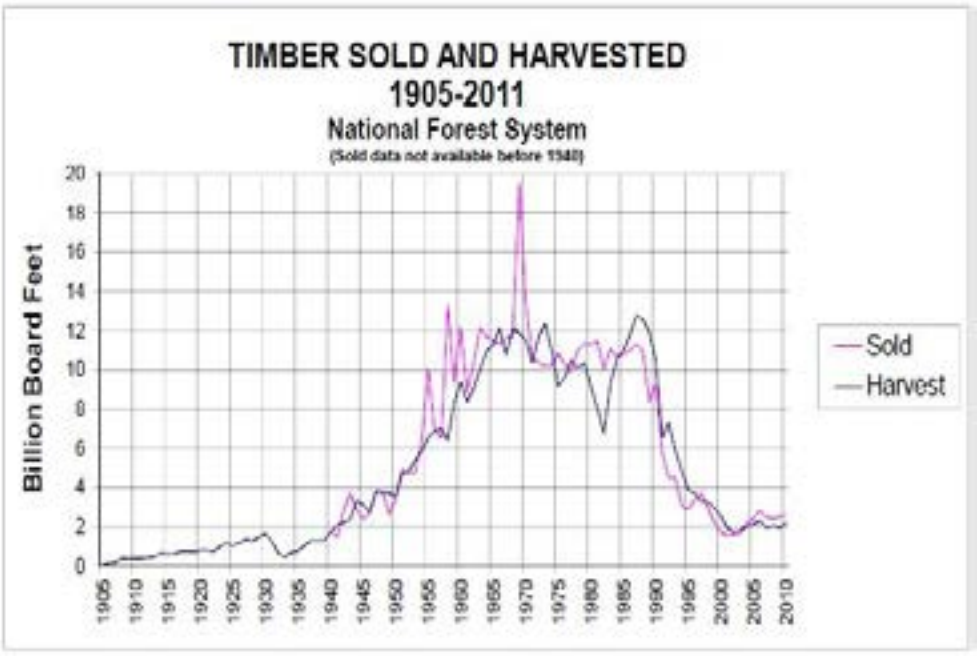

Figure 1. Timber Sold and Harvested.[11]

Not only were Americans consuming more with their new post-war prosperity, but they also used their growing discretionary income and time to pursue leisure time activities like traveling to the national forests.[12] Not all visitors were happy with what they found. Some were alarmed by the impacts of logging and the impacts it had on non-timber values such as wildlife habitat and recreation.[13] During this time some conservationists and citizens began challenging land management decisions in the courts.[14] In response, Congress passed the Multiple Use-Sustained Yield Act of 1960 to balance non-commodity uses of the national forests for purposes such as recreation and

10. *Timber Sold and Harvested*, U.S. FOREST SERV., http://www.fs.fed.us/forestmanagement/documents/sold-harvest/documents/1905-2011_Natl_Summary_Graph.pdf (last visited Mar. 7, 2016).

11. *Id.*

12. DOUGLAS W. MACCLEERY, AMERICAN FORESTS: A HISTORY OF RESILIENCY AND RECOVERY 42 (Forest History Soc'y rev. ed. 2011).

13. *See id.* at 23–24.

14. *See id.* at 25.

wildlife.[15] Also during that period and following thirty years of effort, Congress passed the Wilderness Act in 1964.[16] Another sign of the popular national support for permanently setting aside public lands for recreation and habitat and ensuring that some public land would never be exploited for natural resources.

III. THE BIRTH OF ENVIRONMENTALISM

As interest in the out-of-doors grew throughout the 1950s and 1960s, the membership in organizations like the Wilderness Society and Sierra Club grew as well.[17] However, despite increasing environmental awareness and public criticism of federal forest management, environmentally harmful commercial logging continued in the national forests. By the late 1960s the environmental movement had the popular support and the political momentum to motivate Congress to pass several major pieces of environmental legislation designed to increase environmental protection, public participation, and transparency in federal land management decision-making. These laws included:

- The National Environmental Policy Act (NEPA) in 1969 (Public Law 91-190). Considered the Magna Carta of environmental legislation.[18]
- The Endangered Species Act, passed in 1973 (Public Law 93-205), provides the vehicle for protecting threatened and endangered species.[19]
- The National Forest Management Act (NFMA) in 1976, which becomes the primary legal framework for managing national forests (Public Law 94-588).[20]

Although litigation existed prior to the passage of these laws, the laws became a powerful tool to challenge the government and the impacts of the

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15. Multiple-Use Sustained-Yield Act of 1960, Pub. L. No. 86-517, 74 Stat. 215 (1960); U.S. FOREST SERV., THE PROCESS PREDICAMENT: HOW STATUTORY, REGULATORY, AND ADMINISTRATIVE FACTORS AFFECT NATIONAL FOREST MANAGEMENT 11 (2002), http://www.fs.fed.us/projects/documents/Process-Predicament.pdf.

16. Wilderness Act, Pub. L. No. 88-577, 78 Stat. 890 (1964).

17. POSTWAR AMERICA: AN ENCYCLOPEDIA OF SOCIAL, POLITICAL, CULTURAL, AND ECONOMIC HISTORY 497 (James Ciment ed., 2006).

18. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347 (1970); Shorna R. Broussard & Bianca D. Whitaker, *The Magna Carta of Environmental Legislation: A Historical Look at 30 Years of NEPA-Forest Service Forest Litigation*, 11 FOREST POL'Y & ECON. 134, 148–54 (2009).

19. Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (1973).

20. National Forest Management Act of 1976, 16 U.S.C. §§ 1600–1614 (1976).

logging industry in order to address environmental concerns. This led to an increase in litigation, particularly in the 1990s.

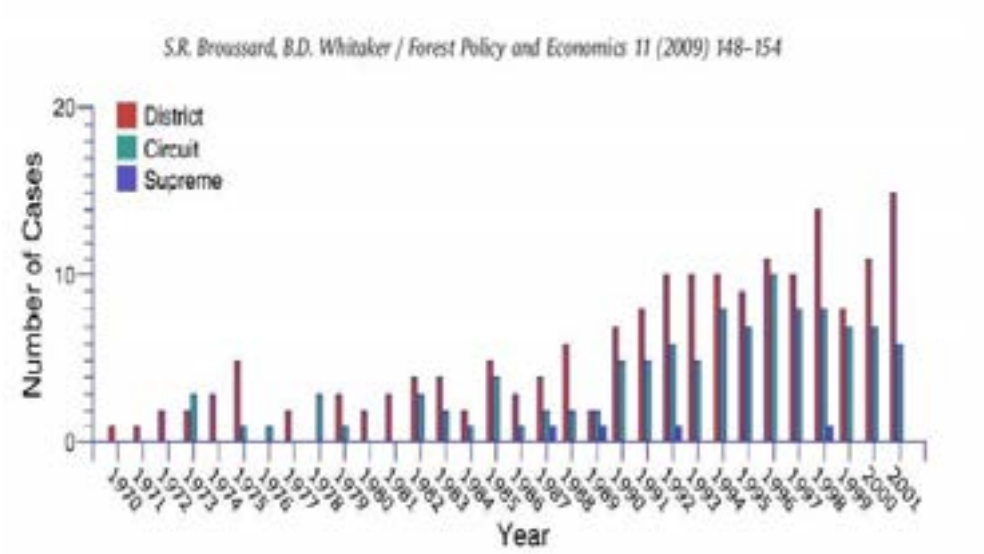

Figure 2. Environmental litigation.

The Forest Service files more EISs than any other federal agency.[21] In the courts, the Forest Service was shown in one study to have a higher success rate than that of all other litigant types;[22] however, when the Forest Service does lose it is often because of a failure to follow a procedural or compliance requirement.[23] The Forest Service has responded to this problem by creating voluminous NEPA documents to guard against procedural challenges.[24] Unfortunately, as a result of more attention paid to procedural requirements less attention is devoted to the substantive environmental and interdisciplinary goals envisioned in NEPA.[25] The Forest Service itself asserted in a 2002 paper titled *The Process Predicament*,

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21. Amanda M.A. Miner et al., *Twenty Years of Forest Service National Environmental Policy Act Legislation*, 12 ENVTL. PRAC. 116, 116 (2010).

22. *Id.* at 123–24.

23. *See, e.g.*, Wyoming v. Dep't of Agric., 570 F. Supp. 2d 1309 (D. Wyo. 2008) (enjoining the Forest Service's Roadless Rule because the agency violated NEPA procedure by denying requests to extend the scoping period, failing to explore alternatives, and failing to prepare a supplemental EIS after making "substantial" changes to the proposed action).

24. *E.g.*, U.S. FOREST SERV., *supra* note 15.

25. *Id.* at 5.

> that too often, the Forest Service is so busy meeting procedural requirements, such as preparing voluminous plans, studies, and associated documentation, that it has trouble fulfilling its historic mission: to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations. Too frequently, the paralysis results in catastrophe.[26]

Legal actions challenging forest management contributed to a decline in commercial logging on the national forests beginning in 1990.[27] However, as the ability to cut and manage forests imploded, forest health was eroding precipitously throughout the ponderosa pine dominated ecosystems of the West.[28] The changes that led to the decline began at the turn of the 20th century as a result of the over-harvesting of old and large trees, livestock over-grazing, and fire suppression (eliminating even beneficial, re-invigorating surface fire that limited the number of trees that could successfully become established).[29] These changes allowed an unprecedented number of pines to germinate and grow.[30] The overpopulation of trees was largely ignored by land managers until the late 1980s and 1990s when the frequency, severity, and size of wildfires drastically changed.[31] Fires that were easily suppressed in the forest in the 1960s and 1970s were manifesting such extreme behavior.[32] As a result of all the fuel in the forest, fires could travel quickly into communities where homes were now intermixed in the forest at the community edge.[33]

By the late 1990s the federal government and the U.S. Forest Service were re-examining forest management strategies and recognizing that active management, such as restoration-based thinning and burning would be necessary in order to reduce the threat of unnatural fire to forests and communities.[34] The problem was that the environmental community didn't

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26. *Id.* at 7.
27. William Wallace Covington & Diane J. Vosick, *Restoration, Preservation, and Conversation: An Example for Dry Forests of the West*, *in* AFTER PRESERVATION: SAVING AMERICAN NATURE IN THE AGE OF HUMANS 133, 140 (Ben A. Minteer & Stephen J. Pyne eds., 2015).
28. W. Wallace Covington et al., *Restoring Ecosystem Health in Ponderosa Pine Forests of the Southwest*, 95 J. OF FORESTRY 23, 23–25 (1997), http://www.fs.fed.us/psw/publications/4403/Restoring.pdf.
29. *Id.* at 23.
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*

trust the Forest Service and the active management they proposed such as mechanical thinning.[35] As a result, active management continued to be under assault in the courts by environmental activists.[36] The environmentalists feared that even forest thinning that was designed to restore forest health and reduce the threat of wildfire could become an excuse to cut large and old trees in order to re-establish commercial logging and undermine conservation and management of national forests for non-timber values.[37]

Policy discussions in Congress that advocate changes to environmental laws in order to expedite forest thinning are viewed by many as potentially dangerous[38] and fraught with controversy. The fear of opening a Pandora's Box that leads to unwanted changes undermines efforts to make common-sense fixes. Recognizing the difficulty of changing policies, the federal agencies, individuals and interest groups began advocating for a new strategy to guide forest management.

IV. COLLABORATION AS ONE SOLUTION

Collaboration as the means to overcome conflict and build agreement on natural resource management increased in popularity beginning in the 1980s.[39] Although the legislation of the 1970s incorporated public participation as part of the environmental review process,[40] the approach was largely reactive, with the agency describing its proposed action and the public responding. Collaboration is different. It is defined as "a process by which multiple stakeholders work together to solve a common problem or achieve a common goal."[41] "It involves sharing information and perceptions to encourage innovation and mutual learning, and is often viewed as an opportunity to improve planning and decision making by finding ways to work beyond gridlock and inefficiency."[42] Finally, at its core is the desire is to re-build trust between and among stakeholders and the Forest Service with the hope that differences can be worked out and litigation avoided.

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35. *Id.*
36. *Id.*
37. *Id.*
38. *See* U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-97-71, FOREST SERVICE DECISION MAKING: A FRAMEWORK FOR IMPROVING PERFORMANCE 99 (1997).
39. ANN MOOTE & KIMBERLY LOWE, ECOLOGICAL RESTORATION INST., WHAT TO EXPECT FROM COLLABORATION IN NATURAL RESOURCE MANAGEMENT: A RESEARCH SYNTHESIS FOR PRACTITIONERS 2 (Dave Egan ed., 2008).
40. *Id.*
41. *Id.* at 3.
42. *Id.*

By 2000, the idea that collaboration was essential to successful natural resource management became institutionalized. For example, in reaction to the record-breaking fire season of 2000, the Fiscal Year (FY) 2001 U.S. Senate and House Conference Report for FY 2001 Department of Interior stated:

> the agencies need to work closely with the affected States, including Governors, county officials and other citizens . . . and governments at all levels. The managers direct the Secretaries to engage Governors in a collaborative structure to cooperatively develop a coordinated, National ten-year comprehensive strategy with the States as full partners in the planning, decision making, and implementation of the plan. Key decisions should be made a local levels.[43]

The Western Governors' Association responded quickly to this direction by assembling a broad cross section of governmental and nongovernmental stakeholders to produce *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment*.[44] From this point in time, collaboration became a regular fixture in land management policy. In 2001, the Secure Rural Schools and Community Self-Determination Act authorized the Collaborative Forest Restoration Program with $5 million in funding to accelerate restoration in New Mexico.[45] Congress passed the Healthy Forest Restoration Act in 2004 in order to expedite forest restoration treatments and lower fire risk in the wildland-urban interface and watersheds.[46] The law also requires multi-party monitoring and collaboration.[47] In 2009, the Collaborative Forest Landscape Restoration Program was established with Congress appropriating $40 million annually to achieve landscape-scale restoration.[48] The Collaborative Forest Landscape Restoration pilots (23 across the nation) are sustained by engaged citizens, public officials, interest

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43. H.R. REP. NO. 106-914, at 193–94 (2000).

44. FORESTS & RANGELANDS, A COLLABORATIVE APPROACH FOR REDUCING WILDLAND FIRE RISKS TO COMMUNITIES AND THE ENVIRONMENT: 10-YEAR COMPREHENSIVE STRATEGY 1 (2001), https://www.forestsandrangelands.gov/resources/plan/documents/7-19-en.pdf.

45. Secure Rural Schools and Community Self-Determination Act of 2000, Pub. L. No. 106-393, 114 Stat. 1607 (2000).

46. Healthy Forests Restoration Act of 2003, Pub. L. No. 108-148, 117 Stat. 1887 (2003).

47. *Id.*

48. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 4001–04, 123 Stat. 1146 (2009); *Collaborative Forest Landscape Restoration Program Overview*, U.S. FOREST SERV., http://www.fs.fed.us/restoration/CFLRP/overview.shtml (last visited Mar. 13, 2016).

groups and business all hoping to build the social license required to accelerate forest restoration and rebuild rural economies.[49]

Collaboration isn't easy. It's often described as "going slow in order to move fast."[50] In other words, it takes time to come to an agreement with diverse stakeholders. But the hope is that time invested at the front end to achieve broad consensus will lead to tangible outcomes when compared to a history of protracted court battles or giving up. The following is a list of expectations from collaboration that are reported in the literature:

- Many of the benefits of collaboration are social, not ecological. The most commonly reported benefit is that it builds social capital (creating relationships that allow people to work together effectively) and improves participants' capacity for future collaboration.
- Reduces conflict and builds trust. Creates interpersonal networks that can increase participants' capacity for innovation and collective flexibility to adapt to changing conditions.
- Allows projects to move forward without litigation.
- Increases transparency, such as how and why decisions are made.
- Frequently results in decisions or projects that are expected to improve resource conditions (better science, address more issues and more innovation).[51]

Collaboration also comes with costs. These include:

- Potential for lowest common denominator decisions.
- Increased conflict.
- Unbalanced representation.

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49. U.S. FOREST SERV. & COLLABORATIVE FOREST LANDSCAPE RESTORATION COAL. STEERING COMM., PEOPLE RESTORING AMERICA'S FORESTS: 2012 REPORT ON THE COLLABORATIVE FOREST LANDSCAPE RESTORATION PROGRAM ii (2012), http://www.safnet.org/fp/CFLR_2012_Annual_Report_LR_12-19-12.pdf.

50. Dawn O'Neil & Kerry Graham, *Go Slow to Go Fast—A Mantra for Getting Started with Collective Impact*, COLLABORATION FOR IMPACT (Apr. 10, 2014), http://www.collaborationforimpact.com/go-slow-to-go-fast-a-mantra-for-getting-started-with-collective-impact/.

51. MOOTE & LOWE, *supra* note 39, at 6.

- Collaboration usually requires the government to surrender authority; otherwise the collaborative activity can be viewed as inauthentic.
- It takes time and money. Some policy makers are concerned that collaboration is too slow. [52]

V. THE FOUR FOREST RESTORATION INITIATIVE (4FRI)

The Four Forest Restoration Initiative, or 4FRI, provides a good illustration of how collaboration helped advance restoration in a normally contentious environment. The Four Forest Restoration Initiative is a collaborative effort among the four national forests that span the Mogollon Rim of northern Arizona (Kaibab, Coconino, Tonto, and Apache-Sitgreaves) and more than thirty diverse stakeholder organizations.[53] The goals of 4FRI are to:

- Plan and implement restoration treatments across 2.4 million acres of ponderosa pine forest.
- Treat 50,000 acres per year during a 20-year period.
- Allow for increased use of prescribed fire and management of natural fires for restoration objectives.
- Engage industry so the cost of restoration is covered by the value of the products removed.
- Assure that the science-based and socially-acceptable agreements forged during the last decade result in the implementation of long-term, landscape-scale restoration.[54]

The members of the 4FRI stakeholder group have a long history of conflict and collaboration. Many of the founding members of 4FRI came together in the late 1990s as a result of an increasing number of severe fires that threatened communities and created the urgency and need to take action.[55] The hope was that through collaboration environmental conflict and litigation

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52. *Id.*

53. *4FRI Description*, FOUR FOREST RESTORATION INITIATIVE, http://www.4fri.org/description.html (last visited Mar. 10, 2016).

54. *4FRI Goals*, FOUR FOREST RESTORATION INITIATIVE, http://www.4fri.org/goals.html (last visited Mar. 14, 2016).

55. DAVID EGAN & ERIK NIELSEN, ECOLOGICAL RESTORATION INST. N. ARIZ. UNIV., THE HISTORY OF THE FOUR FOREST RESTORATION INITIATIVE: 1980S–2010 2–6 (Tayloe Dubay ed., 2014), http://library.eri.nau.edu/gsdl/collect/erilibra/index/assoc/D2014031.dir/doc.pdf.

could be reduced or eliminated. In the Flagstaff area the Greater Flagstaff Forest Partnership (GFFP) was formed to advance restoration.[56] The Natural Resources Working Group (NRWG) was the home for industry, government officials and activists proposing action in the White Mountains of eastern Arizona.[57] By 2009, many of the members of these two organizations would organize under the banner of 4FRI.[58]

The Southwest is the birthplace of the Center for Biological Diversity (CBD), a group well known for its effective use of environmental laws and litigation to challenge proposed management actions.[59] In 1995, CBD filed a successful lawsuit that challenged forest management practices they considered harmful to the survival of the Mexican Spotted Owl.[60] In response to the issues raised by CBD Federal Judge Carl Muecke ordered all logging to stop in all eleven forests of U.S. Forest Service Region 3.[61] CBD was active in fighting thinning and restoration in northern Arizona and was a core member of the Southwest Forest Alliance, a coalition of more than fifty environmental organizations that has since dissolved.[62] By the time 4FRI formed, CBD, which had not formally joined either of the existing collaboratives, did choose to join 4FRI.[63] This set the stage for having a broad spectrum of interests, including potential litigants at the collaboration table for the first time.

The 4FRI Stakeholder Group spent five years collaborating and contributing ideas to the first 4FRI Environmental Impact Statement (EIS).[64] The first EIS set an ambitious goal of analyzing one million acres of the 2.4-million-acre 4FRI landscape to identify areas suitable for restoration.[65] When

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56. GREATER FLAGSTAFF FORESTS PARTNERSHIP, http://gffp.org/ (last visited Mar. 14, 2016).

57. EGAN & NIELSEN, *supra* note 55, at 3.

58. *Id.* at 19.

59. *Our Story*, CTR. FOR BIOLOGICAL DIVERSITY, http://www.biologicaldiversity.org/about/story/ (last visited Jan. 30, 2016).

60. *Saving the Mexican Spotted Owl*, CTR. FOR BIOLOGICAL DIVERSITY, http://www.biologicaldiversity.org/species/birds/Mexican_spotted_owl/ (last visited Feb. 14, 2016).

61. Shea Andersen, *Owl Shuts down the Southwest*, HIGH COUNTRY NEWS (Sept. 4, 1995), http://www.hcn.org/issues/42/1276.

62. Press Release, Ctr. for Biological Diversity, Old Growth Logging on North Rim of Grand Canyon Proposed While Community Protection Projects Go Unfunded (Aug. 7, 2003), http://www.biologicaldiversity.org/news/press_releases/grand8-7-03.html.

63. *Stakeholders*, FOUR FOREST RESTORATION INITIATIVE, http://www.4fri.org/stakeholders.html (last visited Feb. 10, 2016).

64. *4FRI Planning*, U.S. FOREST SERV., http://www.fs.usda.gov/main/4fri/planning (last visited Feb. 11, 2016).

65. *Id.*

the EIS was released, it advocated restoration treatments that included mechanical thinning and prescribed burning on almost 600,000 acres.[66] For some, this approach represented a major breakthrough in forest management because for the first time the Forest Service was analyzing the forest health and fire problem at the scale it needed.[67]

During the first five years of collaboration, pressure was exerted on the Forest Service to increase their collaborative performance and engagement with the stakeholders.[68] Whereas some members felt that anything agreed on by the Stakeholder Group should be adopted by the Forest Service in its totality, federal laws such as NEPA made it impossible for the Forest Service to meet those demands.[69] This dynamic resulted in back and forth conversations that helped create a positive evolution toward more document sharing, accessibility, and transparency as the EIS progressed toward completion. Fundamentally, it was the goal of the stakeholders and the Forest Service to create a document that the Stakeholder Group would endorse with 100 percent consensus so that there was a clear demonstration of support for restoration and litigation would possibly be avoided.[70] Because several litigious groups were not at the collaborative table and given the low threshold for standing to object to the EIS the group worked diligently with cautious, but realistic, optimism.

VI. HOW DID THE FOUR FOREST RESTORATION INITIATIVE (4FRI) STAKEHOLDER GROUP DO AS A COLLABORATIVE PARTNERSHIP?

Comparing the 4FRI Stakeholder Group performance to the expectations for collaboration discussed in Section V, *supra*, shows that 4FRI generally benefited from collaboration. If collaboration was the actual reason that delay-causing litigation of the largest EIS proposing mechanical thinning at

66. Press Release, U.S. Forest Serv., Forest Service Issues Decision on Historic Effort to Restore Forests on a Half Million Acres; More than 30 Stakeholder Groups Joined the Project (Apr. 20, 2015), http://www.fs.usda.gov/detail/coconino/news-events/?cid=STELPRD3835399.

67. Press Release, U.S. Forest Serv., Largest Forest Service Restoration Initiative Reaches Milestone (Apr. 20, 2015, 1:45 PM), http://www.fs.fed.us/news/releases/largest-forest-service-restoration-initiative-reaches-milestone.

68. *See* FOUR FOREST RESTORATION INITIATIVE, 4FRI STAKEHOLDER GROUP MEETING MINUTES 4 (2015), http://4fri.org/pdfs/meetings/stakeholders/stakeholder_meeting_notes_050510.pdf.

69. FOUR FOREST RESTORATION INITIATIVE, THE 4FRI ADVANCE: LESSONS LEARNED AND MOVING FORWARD 4 (2015), http://www.4fri.org/pdfs/meetings/stakeholders/advance_meeting_notes_05272815.pdf .

70. *See* U.S. Forest Serv., *supra* note 66.

the landscape scale was avoided, then collaboration was a resounding success.

Overall the group's relationships and ability to work together improved over time.[71] This was particularly true in small working groups where considerable social capital accrued. One example of the strength of relationships both within the group and between the group and the Forest Service was the completion of an "Adaptive Management and Monitoring Plan" that was included almost verbatim in the final, signed EIS.[72]

The 4FRI Stakeholder Group held a retreat in May 2015 following the successful completion of the first EIS to reflect on the previous five years, to articulate lessons learned from that experience, and to identify recommendations to improve the collaborative process and the second EIS.[73] In the pre-retreat interviews conducted by a third-party neutral facilitator, members identified commitment and resiliency as two positive characteristics of the group.[74] However, they also identified problems with group dysfunction including persistent lack of trust between members and some members and the Forest Service, a lack of respect by some individuals, the perpetuation of personal agendas, an un-level playing field when one group has more power than another and a problem with a few individuals dominating the conversation.[75] These problems are not new and have vexed the process since the beginning.

The group also felt that the transparency of Forest Service decision-making through the NEPA process improved at the local level but was poor at the regional level.[76] Some individuals also asked for more transparency in the awarding of thinning contracts.[77] The size, selection, and management of thinning contracts are a persistent topic of concern by many members of 4FRI.[78]

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71. *See* FOUR FOREST RESTORATION INITIATIVE, 4FRI STAKEHOLDER MEETING MINUTES 5 (2015), http://4fri.org/pdfs/meetings/stakeholders/stakeholder_meeting_notes_042215.pdf.

72. *1st Environmental Impact Statement (2011–2015)*, FOUR FOREST RESTORATION INITIATIVE, http://www.fs.usda.gov/detail/4fri/planning/?cid=stelprdb5361003 (last visited Feb. 11, 2016).

73. FOUR FOREST RESTORATION INITIATIVE, *supra* note 71, at 6.

74. BRYCE ESCH, SW. DECISION RES., ECOLOGICAL RESTORATION INST. N. ARIZ. UNIV., RESULTS AND LESSONS LEARNED FROM THE MAY 2015 4FRI RETREAT: 4FRI ASSESSMENT INTERVIEW SUMMARY RESULTS (forthcoming 2016), http://www.nau.edu/eri/publications-media/white-papers/.

75. *Id.*

76. FOUR FOREST RESTORATION INITIATIVE, *supra* note 71, at 6.

77. *Id.*

78. *Id.*

The Forest Service and the Stakeholder Group agree that the final EIS was improved through collaboration.[79] One of the most valuable services performed by the stakeholders was testing the integrity of the draft EIS against common mistakes that lead to process-based objections and litigation.[80] For example, the group was concerned about whether or not a document of this size could meet the standard for "site specificity."[81] A subset of stakeholders tested the document and found that it did meet the standard but that it could be improved by making several changes.[82] This not only helped to improve the quality of the document but also sent a signal to organizations watching 4FRI that the document was buttressed against attacks based on this particular standard for compliance.[83]

With regard to potential "costs" of collaboration both stakeholders and the Forest Service will admit that the EIS took a lot of time, as well as human and financial resources.[84] Also, it is not a perfect document with regard to the science that supports restoration. But a number of uncontrollable factors cause that phenomenon, not the least of which is compliance with federal laws that in some places works at cross-purposes with restoration. In addition, some stakeholder agreements designed to limit some tree thinning in order to build support also sub-optimize full restoration.[85] However, when compared to doing nothing and succumbing to catastrophic fire those issues are small compared to moving the entire project forward.

The literature on collaboration mentions that there can be unbalanced representation in a collaborative that will influence outcomes.[86] This was the case in 4FRI as well. There were organizations with funding that enabled more participation and more influence for that organization. Other imbalances included individuals and a group with the backing of local elected officials who would use that power to exert influence outside the

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79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. Matthew Alan Koschmann, Communication in Collaborative Interorganizational Relationships: A Field Study of Leadership and Stakeholder Participation (May 2008) (unpublished PhD dissertation, University of Texas at Austin), https://books.google.com/books?id=OUNtIQAl2uQC&pg=PA137&lpg=PA137&dq=unbalanced+representation+in+a+collaborative&source=bl&ots=MG-ArHRGXp&sig=NOZsNBfJlCiGXJAj97kzTgL6EUI&hl=en&sa=X&ved=0ahUKEwjt78rvrJbKAhUG6GMKHQQDBqgQ6AEIHjAB#v=onepage&q&f=false.

collaborative. Finally, there are the litigious groups that would inject menacing threats of litigation if an outcome did not meet their objectives.

One reality of collaboration is that it rarely represents the entire public spectrum of interests. The Forest Service is required to consider all public input through the NEPA process.[87] Therefore, it is difficult for the Forest Service to require or to keep everyone at the collaboration table in order to identify consensus on issues. It is logical to assume that the Forest Service would give more weight to a consensus recommendation from a stakeholder group representing more than thirty groups and hours of collaboration; however, collaboration does not remove or diminish the public involvement requirements by the Forest Service in order to comply with NEPA.

Finally, the Forest Service consistently reminded the 4FRI Stakeholder Group that federal law requires that final decision-making authority belonged to the Forest Service. What the Forest Service did yield in terms of authority to the Stakeholder Group was more opportunity to engage in the preparation of the document in order to create a cooperative and collaborative dialogue as opposed to a reactive, one-way discussion. In the end there was general agreement that this contributed to a better document with wider acceptance.

VII. DID COLLABORATION WORK?

Following the release of the Final EIS and Draft Record of Decision (ROD) the 4FRI Stakeholder Group passed a major collaborative milestone by sending a letter to the Forest Service unanimously endorsing the Final EIS and Draft ROD.[88] It was a common refrain among the group that five years ago it seemed impossible that we would ever achieve that level of support.

For many decades the Forest Service has used a post-decisional administrative appeal process to address challenges to an EIS. In 2014, a new pre-decisional objection process was initiated.[89] The administrative review occurs prior to the issuance of a final ROD on a proposed project.[90] After receiving qualified objections to the draft ROD (as outlined in the procedures) the deciding officer has the discretion to conduct public

87. *How Citizens Can Comment and Participate in the National Environmental Policy Act Process*, EPA, http://www.epa.gov/nepa/how-citizens-can-comment-and-participate-national-environmental-policy-act-process (last updated Nov. 2, 2015).

88. Press Release, 4FRI, 4FRI Stakeholder Group Response to Final EIS and Final ROD (Jan. 16, 2015), http://4fri.org/pdfs/press/4FRI_SHG_Response_to%20FEIS_DROD_Final%20.pdf.

89. 36 C.F.R. § 218.1 (2016).

90. SUSAN BROWN, ADMINISTRATIVE AND LEGAL REVIEW OPPORTUNITIES FOR COLLABORATIVE GROUPS 3 (Ecological Restoration Inst. et al. eds., 2015).

resolution meetings with the objectors to resolve outstanding differences.[91] The new pre-decisional agreement was applied to the first 4FRI EIS.[92]

There were nine objections to the 4FRI EIS.[93] The Center for Biological Diversity's objection was the only one filed by a formal member of the 4FRI Stakeholder Group.[94] The Sierra Club filed an objection as well,[95] but is not a formal member although a representative regularly attends meetings.[96] One objection was rejected because the individual did not have standing.[97] The remaining objections were filed by Wild Earth Guardians,[98] the John Muir Project,[99] and four separate individuals.[100] The main issues were protection and monitoring of Mexican Spotted Owls (MSO), proposed restoration treatments in MSO Protected Activity Centers, grazing, potential health effects from smoke, and compliance with procedural requirements.[101]

Two individual objectors chose not to participate in the public process. One objector used the public meeting to argue their point and then admitted that their concern about smoke would not be addressed. The John Muir Project withdrew from the process dissatisfied.[102] The remaining objectors engaged in resolution discussions with the Forest Service. However, one objector subsequently filed a complaint following the Record of Decision. He did not request injunctive relief, which allows the project to proceed as planned. The Wild Earth Guardians were sufficiently satisfied to formally withdraw their objection.[103] Throughout the public meetings the deciding officer (in this case the Regional Forester for Region 3) encouraged and engaged the 4FRI Stakeholder Group to provide comment on issues where the Stakeholder Group had worked on the issue of concern.[104]

There were several informal observations made by the Forest Service and stakeholders following the objection process. The Forest Service

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91. *Id.*

92. U.S. DEP'T OF AGRIC., RECORD OF DECISION FOR THE FOUR-FOREST RESTORATION INITIATIVE 4 (2015), https://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3836454.pdf.

93. *Id.*

94. *Id.* at 56.

95. *Id.* at 52.

96. *Id.*

97. *Id.* at 4.

98. *Id.* at 59–65.

99. *Id.* at 48–52.

100. *Id.* at 48–65.

101. *Id.*

102. Letter from Calvin N. Joyner, Regional Forester, to Dorothy Holasek 3 (Apr. 10, 2015), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3835406.pdf.

103. *Objection Resolution Agreement*, FOUR FOREST RESTORATION INITIATIVE 8 (Apr. 10, 2015), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3835409.pdf.

104. U.S. DEP'T OF AGRIC., *supra* note 92, at 48–65.

representatives noted that by having a public conversation that included a large number of stakeholders, the objectors were more civil than in private forums. Stakeholders observed that some of the objections raised by the objectors demonstrated a lack of familiarity with the document and the fact that some of their issues had already been addressed. Everyone felt that the objectors who did not participate in the collaborative would have benefited from the experience. Finally, the objections that were raised by the two objectors that had participated in the collaborative were more specific and better conceived than the other objections. In the end, the stakeholders and the Forest Service felt that collaboration helped resolve many issues that would have been raised during the objection process. In addition, there was a common opinion that the pre-decisional objection process is superior to the post-decisional process.

The ultimate proof of success was the signing of the Final ROD on April 17, 2015.[105] And unlike so many EISs before it, the first 4FRI EIS to analyze almost one million acres and clear almost 600,000 acres for restoration treatments is being implemented.[106]

105. *1st Environmental Impact Statement (2011–2015)*, *supra* note 72.

106. U.S. DEP'T OF AGRIC., *supra* note 92, at 1.